



Collection Law Section

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March 18, 2015

Rep. Karl Rhoads, Chair
Rep. Joy A. San Buenaventura, Vice-Chair
House Committee on Judiciary

Re: SB 758, SD2 Relating to Service by Publication
Hearing: Friday, March 20, 2015, 2 p.m., Conf. Rm. #325

Chair Rhoads, Vice-Chair San Buenaventura and Members of the
Committee:

I am Jane Sugimura and I am a Director on the Collection Law Section
("CLS") of the Hawaii Bar Association. CLS strongly supports passage of
this bill and urges that you pass it out of this committee.

In 2012, the Legislature enacted revisions to Chapter 667 (i.e., in Act 182 HB1875 HD2 SD2 CD1) that provided for publication of foreclosure notices in (i) a newspaper of general circulation for three consecutive weeks or (ii) on a state website [see HRS 667-20]. The state website is in operation and is being administered by the DCCA, Real Estate Commission¹.

Our section believes that the laws regulating publication of summons in a civil case should be consistent with the provisions in HRS 667-20 and we believe that the language in this bill will accomplish that.

Regarding testimony submitted in a previous hearing in opposition to this bill by the Honolulu Star-Advertiser, we respond as follows: The Star-Advertiser claims that "offering the option to post the summons on a state website and only publishing the summons once in a newspaper, significantly diminishes the ability to reach the largest audience". . . and arguably reduces notice to defendants that a lawsuit has been filed against them. The newspapers own numbers contradict that position. In January 2015, the newspaper had 1.8 million viewers on 15 million pages of content and **only 596** viewers on 2,106 legal notices.

¹ Cost of publication was a strong factor in the enactment of this provision. The cost of publishing foreclosure notices in the newspapers most times exceeded \$2,000 and these costs were ultimately charged to the borrow-consumer as part of the lenders' costs to do a foreclosure. The cost to publish on the state web site currently does not exceed \$300 and we are informed that with increased volume, that cost should decline. Currently the cost to do a publication of summons in a newspaper in connection with a collection action typically exceeds \$2,000 and this cost is passed on to the debtor-consumer as a cost of collection. Attached to this testimony is a copy of the estimate of \$2,392.67 from the Star-Advertiser to publish the ad that appears on the left-hand side of the estimate.

There is no way to substantiate the Star-Advertiser's position that publishing ads provides "better" notice to defendants than publishing the legal notice on the internet (i.e., on the state website as provided in SB758); however, a number of states have passed laws or are considering laws to require legal notices to be posted on the internet on the grounds that more people will see the notices and that the cost to publish on the internet is lower than publishing in a newspaper. In fact, there is a website dedicated to this issue: <http://legal-notice.org/>.

As a practical matter, it is unlikely that defendants will see the publication of summons against them no matter how many times it is published in the newspaper. Internet penetration is growing rapidly while newspaper circulation continues to decline. It is easy to demonstrate that internet penetration far exceeds declining print circulation. It is virtually impossible for any print based newspaper to argue it has more readers than internet users in any given geographic area.

Having the notice on a state website means that it is posted continuously rather than once each week for three or four weeks (i.e., as in a newspaper) and this increases the possibility of notice to a defendant. Also, if the notice were posted on the internet, it is possible to do a search by name(s), which cannot be done if the notice is published in a newspaper. Arguably, the internet posting would provide "better" notice to defendants because they would not have to buy a newspaper subscription to see the notice. They could check the state website 24/7 from their computers, smart phones and other mobile devices.

We believe that SB 758 is a suitable compromise between the newspaper's position and our Section's position since it provides for one newspaper publication along with the internet posting.

Finally, SD2 identifies the website of the department of the attorney general as the "state website" where the ads would appear. We are not aware that the attorney general's department's website allows for publication of ads whereas there is an existing website at the DCCA that was established by Act 182 to allow for publication of legal notices relating to non-judicial foreclosures and we suggest that that website be designated to publish the summons that are the subject matter of this bill. If there is a cost related to modifying or upgrading the website so that the summons can be uploaded, that cost can be charged to the attorneys or law firms who would be using the website since the cost to do so would clearly be less expensive than publishing the summons in the newspaper.

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For all of these reasons, we respectfully ask that you pass out SB 758.

Thank you for the opportunity to testify.

A handwritten signature in black ink, appearing to read "Jane Sugimura". The signature is fluid and cursive, with the first name "Jane" written in a larger, more prominent script than the last name "Sugimura".

Jane Sugimura

The comments and recommendations submitted reflect the position/viewpoint of the Collection Law Section of the HSBA. The position/viewpoint has not been reviewed or approved by the HSBA Board of Directors, and is not being endorsed by the Hawaii State Bar Association.

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

SUMMONS

TO:

Defendant

Defendant

YOU ARE HEREBY NOTIFIED that

Plaintiff, has filed a Complaint in Civil No. 12-1-1324-05 KKS, against you in the above-entitled Court, wherein Plaintiff prays for a money judgment for sums due under a Retail Space Lease dated November 18, 2009 and a personal guaranty executed by [REDACTED] in the amount of \$32,067.24 through May 31, 2012, plus additional rent, interest, costs and attorneys' fees, and for other relief.

YOU ARE HEREBY SUMMONED to be and appear in the courtroom of the Honorable Karl K. Sakamoto, in the Kaahumanu Hale, 777 Punchbowl Street, 4th Floor, Honolulu, Hawaii, on MARCH 22, 2013, at 9o'clock a.m. or to file an answer or other pleading and serve it before said day upon BENDET FIDELL, AAL, ALC, Plaintiffs attorney, whose address is 710 American Savings Bank Tower, 1001 Bishop Street, Honolulu, Hawaii 96813. If you fail to do so, judgment by default will be taken against you for the relief demanded in the Complaint.

DATED: Honolulu, Hawaii JAN 25 2013.

L. PARALES (SEAL)

Clerk of the above entitled Court

(SA429243 61/31, 2/7, 2/14, 2/21/13)

TO

FAX#/EMAIL: 521-734

CONTACT # 566-2118/524-0544

DATE 1/20/13

ACCOUNT # 11164

FROM Star Advertiser/MidWeek Legal Advertising Dept

FAX: 808-529-4829

☐ Lisa Kaukani (808-529-4344)

Email: lkaukani@staradvertiser.com

☒ Rose Rosales (808-529-4825)

Email: rrosales@staradvertiser.com

Remit Payment to Quick
Honolulu Star-Advertiser/Midweek
500 Ala Moana Blvd., 7 Waterfront Plaza, Ste 500
Honolulu, HI 96813

PUBLICATION 1/31, 2/7, 2/14, 2/21/13

CLASSIFICATION Summary

Paper: Star Advertiser Staradvertiser.com
MidWeek Monster.com

SIZE: 2 column(s) x 4.25

Affidavit 1

TOTAL COST \$ 2,392.67

Proof Enlarged 125%/150%/175%

☐ SEE ATTACHED FOR PROOF

AD # 429243

■ AD PROOF ■

*****APPROVAL BY*****

12 am/pm Wed 1/30/13

Correction(s) noted on proof

Proof OK as of Date

Payment Method (Circle):

Prepayment: ☒ Invoice

P.C.# Check#

PCARD/CC

EXP CARD CASH

CARD HOLDER

Ad will not be released for publication unless payment & signature is received by above date and time

*Signature:

Please proof read thoroughly.

Oahu Publications, Inc. will not be responsible for any errors typographical or otherwise, once the proof has been approved and signed by the advertiser.



Representative Karl Rhoads, Chair
Representative Joy A. San Buenaventura, Vice Chair
House Committee on Judiciary

March 20, 2015; 2:00 PM
Hawaii State Capitol, Room 325

RE: SB 758 SD2 – Relating to Service by Publication – IN OPPOSITION

Chair Rhoads, Vice Chair San Buenaventura and members of the committee:

The Honolulu Star-Advertiser opposes SB 758 SD2, which, if enacted, amends the method of service of process for all civil cases when a personal service is unsuccessful.

Whenever a lawsuit is filed and one of the defendants cannot be found after sufficient effort is made to locate them, the attorney attempting to serve the defendant can apply to court for an order permitting the attorney to serve the person by publication (filing the summons and a description of the lawsuit in a newspaper of general circulation in the state).

Offering the option to post the summons on a state website and only publishing the summons once in a newspaper, significantly diminishes the ability to reach the largest audience. A summons on a website will not generate the readership that a printed summons in a daily newspaper will receive. We see this first hand with our own website.

StarAdvertiser.com is one of the most visited websites in the State. In January 2015, we had over 1.8 million unique users view 15 million pages of content on our site. In the same month we had only 596 unique users view 2,106 legal notice pages. All legal notices that run in our paper are automatically posted to our site.

When it comes to service by publication, there should be a strong desire to make sure that the service of a summons by publication is distributed to the largest possible audience. The Honolulu Star-Advertiser reaches over 516,000 readers every week.

We urge the Committee to hold this measure. Thank you.

Dennis E. Francis
President & Publisher



LATE

**TESTIMONY OF
DEPARTMENT OF THE ATTORNEY GENERAL
NINETY-EIGHTH LEGISLATURE, 2015**

ON THE FOLLOWING MEASURE:

S.B. NO. 758, S.D. 2, RELATING TO SERVICE BY PUBLICATION.

BEFORE THE:

HOUSE COMMITTEE ON JUDICIARY

DATE: Friday, March 20, 2015

TIME: 2:00 p.m.

LOCATION: State Capitol, Room 325

TESTIFIER(S): Douglas S. Chin, Attorney General, or
Caron Inagaki, Deputy Attorney General or
Marie Gavigan, Deputy Attorney General

Chair Rhoads and Members of the Committee:

The Department of the Attorney General provides comments on this bill.

This bill amends chapter 634, Hawaii Revised Statutes, by adding a new section relating to service by publication. The proposed new section provides in pertinent part:

§634 - Service by publication. (a) When service of a summons is required by law, court rule, or court order, and service of the summons on a defendant by personal delivery or by certified, registered, or express mail is not successful despite a reasonable attempt, and if the facts shall appear by affidavit, declaration, or otherwise to the satisfaction of the court, the court may order that service of the summons be made by publication:

...

- (2) **On the website of the department of the attorney general**, in a manner and for such time as the court may order, but at least twenty-one days before the return date stated in the summons; provided that the summons shall also be published at least once in a newspaper described in paragraph (1) at least twenty-one days before the return date. [Emphasis added.]

Subsection (a)(2) provides that when service by publication is appropriate, the court may order service by publication in an electronic format on the website of the Department of the Attorney General. As a general matter, the Department of the Attorney General does not have any objections to service by publication in an electronic format; however, its website would not be an appropriate forum on which the publication should be posted. In addition, as set forth below, there are a number of other related issues that need to be addressed.

Because electronic publication is effectuated only through a court order, it would seem to make more sense to have the publication posted on the Judiciary's website rather than the Attorney General's. The Department of the Attorney General has nothing to do with issuing orders approving service by publication, electronically or otherwise. Members of the public would not logically think to go to the Attorney General's website when searching for publication notices, but it would be logical to go to the court's website.

We would recommend that the bill be amended to have publication by electronic means be on the website of the Judiciary or somewhere on the general State of Hawaii portal rather than the website of the Department of the Attorney General.

Regardless of where the electronic publications are posted, there are many questions that first need to be answered. What is the role of the attorney or party generating the summons in this electronic posting process? How will the information be received and inputted? What information has to be documented? In what format will it be posted? Can fees be charged without any specific statutory authority? If so, what would be an appropriate amount? Would whoever is maintaining the website have any responsibility for the content of the summons? Could the website operator be subject to any liability if there is any incorrect information in the summons or if the website is unavailable at any given time?

We believe that, before this bill is enacted, further consideration should be given as to where best to post electronic publications and how the other related questions can be addressed.